

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**DAVID G. LUSICK,**

**Plaintiff,**

**v.**

**Dr. ARMITT KULLAR, et al.,**

**Defendants.**

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**CIVIL NO. 3:CV-05-1274**

**(Judge Caputo)**

**M E M O R A N D U M**

**I. Background**

Plaintiff, David G. Lusick, an inmate at the Smithfield State Correctional Institution ("SCI-Smithfield") at Huntingdon, Pennsylvania, commenced this action by filing a *pro se* Complaint (Doc. 1) pursuant to the provisions of 42 U.S.C. §1983. Plaintiff alleged that he received improper dental treatment while incarcerated at SCI-Smithfield, and he sought compensatory and punitive damages. Subsequently, Plaintiff filed a First Amended Complaint (Doc. 23), in which he reiterated the original claim, and he added a claim challenging his trial and conviction which took place in 1994. He alleged that at his 1994 trial, the prosecutors ("Philadelphia Defendants") withheld exculpatory evidence, in violation of his due process rights under the Fifth and Fourteenth Amendments of the United States Constitution.

Upon review of the First Amended Complaint, the Court concluded that Plaintiff's claims failed to satisfy the requirements for permissive joinder under Federal Rule of Civil Procedure 20(a). Consequently, by Order dated September 2, 2005 (Doc. 25), the Court directed Plaintiff to file a Second Amended Complaint, complying with the Federal Rules of Civil Procedure. Plaintiff was specifically advised that his amended pleading should raise

claims arising from “a common set of operative facts” (Doc. 25 at 4), and he was forewarned that failure to file an amended complaint that complies with the Federal Rules of Civil Procedure would “result in the dismissal of all but the first count contained in Plaintiff’s first amended complaint, related to inadequate dental care at SCI-Smithfield.” (*Id.* at 5.)

Thereafter, Plaintiff filed another amended complaint, titled “Third Amended Complaint” (Doc. 79), which was accepted by the Court as timely filed. Again, the document raised two claims that do not arise out of the same operative facts. The first claim related to alleged insufficient dental care arising from treatment by the prison dentist, Amritt Kullar, from 2000-2001 (see Doc. 79 at 2-3), and the second claim related to alleged improper medical care for an injury to Plaintiff’s knee occurring on December 7, 2001 (see *Id.* at 3, ¶ 6). While both claims related to allegations of insufficient medical attention, they arose from independent series of events, and the only common thread between the incidents was the fact that they both took place at SCI-Smithfield. Accordingly, since Plaintiff’s Third Amended Complaint (Doc. 79) did not comply with the requirements of Fed. R. Civ. P. 20, the case proceeded on Plaintiff’s claim of inadequate dental care at SCI-Smithfield, as set forth in Count I of his first and third amended complaints. By Order dated September 5, 2006 (Doc. 85), the Court granted Defendants’ motion to dismiss Plaintiff’s Third Amended Complaint, and the case was closed.

Currently pending is Plaintiff’s Motion for a Change of Venue (Doc. 96), Plaintiff’s Motions to Stay Proceedings (Docs. 88 and 98), Plaintiff’s Motion to Sever the Claims Against the Philadelphia Defendants and Change Venue (Doc. 105), Plaintiff’s Motion for Temporary Restraining Order (Doc. 110), and Defendants’ unopposed Motion for Relief

From Further Filing Obligations Regarding Plaintiff's Harassing Motion Practice (Doc. 114). For the following reasons, Plaintiff's motions to stay proceedings will be denied, and the remaining motions will be dismissed.

## **II. Discussion**

### **A. Plaintiff's Motions to Stay Proceedings**

Plaintiff has filed a Motion to Stay Proceedings under Federal Rule of Civil Procedure 62 (b), (c), (d) and (h) as well as Rule 54 (b) (Doc. 88), and Plaintiff has filed a second Motion to Stay Proceedings Until the Philadelphia Defendants Enter an Appearance (Doc. 98). Although the Court may enter a post-judgment stay of proceedings under Rule 62, since the Philadelphia Defendants are not required to enter an appearance in a closed case, Plaintiff's second Motion to Stay Proceedings (Doc. 98) will be denied. Moreover, since the case was dismissed, there is no judgment to be enforced, and Plaintiff's request for a stay under Rule 62 (b) and (h), and under Rule 54 (b) will be denied. Further, since there was no ruling on a claim for injunctive relief in the Court's Order dismissing this case (Doc. 85), Plaintiff's request for relief under Rule 62 (c) will be denied. Finally, since there is no appeal pending, Plaintiff's request for relief under Rule 62 (d) will be denied.

### **B. Plaintiff's Motions to Change Venue and Motion for Restraining Order**

Plaintiff has also filed a Motion for Change of Venue (Doc. 96), a Motion to Sever the Claims Against the Philadelphia Defendants and for Change of Venue (Doc. 105), and a Motion for Temporary Restraining Order (Doc. 110). However, since this case is now closed, the Court no longer has jurisdiction to rule on these motions, and the motions will

be dismissed.

**C. Defendants' Motion for Relief From Further Filing Obligations**

Defendants have filed a Motion for Relief From Further Filing Obligations Regarding Plaintiff's Harassing Motion Practice (Doc. 114), in which they seek to be relieved from further obligations to respond to Plaintiff's numerous filings. Although the Defendants are not obligated to respond to specious filings, and the Defendants' motion may be deemed unopposed (see M. D. Pa. L. R. 7.6), the Court no longer has jurisdiction to rule on the motion, as noted above, and the motion will be dismissed. An appropriate Order follows.

Dated: May 21, 2007.

/s/ A. Richard Caputo  
A. RICHARD CAPUTO  
United States District Judge

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(Judge Caputo)

**ORDER**

**AND NOW, THIS 21<sup>st</sup> DAY OF MAY, 2007**, in accordance with the foregoing  
Memorandum, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's Motions to Stay Proceedings (Docs. 88 and 98) are **DENIED**.
2. Plaintiff's Motion for Change of Venue (Doc. 96), Plaintiff's Motion to Sever (Doc. 105), and Plaintiff's Motion for Temporary Restraining Order (Doc. 110) are **DISMISSED**.
3. Defendants' Motion for Relief From Further Filing Obligations Regarding Plaintiff's Harassing Motion Practice (Doc. 114) is **DISMISSED**.

/s/ A. Richard Caputo  
A. RICHARD CAPUTO  
United States District Judge